

TENTATIVE RULINGS for CIVIL LAW and MOTION

July 29, 2009

Pursuant to Yolo County Local Rules, the following tentative rulings will become the order of the court unless, by 4:00 p.m. on the court day before the hearing, a party requests a hearing and notifies other counsel of the hearing. To request a hearing, you must contact the clerk of the department where the hearing is to be held. Copies of the tentative rulings will be posted at the entrance to the courtroom and on the Yolo Courts Website, at www.yolo.courts.ca.gov. If you are scheduled to appear and there is no tentative ruling in your case, you should appear as scheduled.

Telephone number for the clerk in Department Fifteen: (530) 406-6942

TENTATIVE RULING

Case: **Haskell v. California Casualty Indemnity Exchange**
Case No. CV PT 09-1237

Hearing Date: **July 29, 2009** **Department Fifteen** **9:00 a.m.**

Plaintiff Catherine Haskell's motion to quash subpoena for psychotherapy records of plaintiff and request for sanctions is **GRANTED**. (Code Civ. Proc., §§ 1985.3, subd. (g), 1985.6, 1987.1, 1987.2 & 2023.010 *et seq.*) Defendant California Casualty Indemnity Exchange and its attorney Cherrie M. Sutherland shall pay sanctions to plaintiff and her attorney in the amount of \$1,240. As the sanctions amount requested by plaintiff for the time her attorney will spend at the hearing is prospective, that amount is not included in the award.

If no hearing is requested, the tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

TENTATIVE RULING

Case: **Page v. Regents of the University of California, et al.**
Case No. CV PM 08-228

Hearing Date: **July 29, 2009** **Department Fifteen** **9:00 a.m.**

Plaintiffs Robert S. Page's and Yun Young Page's motion to compel the deposition of Sandra Jack is **GRANTED**. (Code Civ. Proc., §§ 2017.010 *et seq.* & 2025.450, subd. (a).)

Defendant Textron Inc. dba E-Z-Go's motion for protective order prohibiting the deposition of Sandra Jack is **MOOT**.

Plaintiffs' request for sanctions is **GRANTED**. (Code Civ. Proc., §§ 2023.010 *et seq.* & 2025.450, subd. (c)(1).) Defendant Textron Inc. dba E-Z-Go shall pay plaintiffs \$1,040.00 in sanctions by August 31, 2009.

If no hearing is requested, the tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

TENTATIVE RULING

Case: Silen v. Regents of The University of California
Case No. CV CV 08-91

Hearing Date: July 29, 2009 **Department** Fifteen **9:00 a.m.**

Defendant Regents of the University of California's request for judicial notice is **GRANTED**. (Evid. Code, § 452, subds. (g) and (h).)

Defendant's evidentiary objection numbers 2, 4, 5, 7, 9, 10, 13, 14 and 15 are **SUSTAINED**. All other evidentiary objections are **OVERRULED**.

Defendant met its burden by submitting evidence showing that the reasons for its decision to promote Kelly Gilmore instead of the plaintiff are unrelated to intentional age bias against the plaintiff. Despite his juris doctor degree and experience, the evaluations of the plaintiff's work performance as a Contract Analyst IV were not favorable. (Defendant's Exhibits D, E, F, G, H, and I; Lamb Declaration ¶¶ 1 and 17-18; Williams Declaration ¶¶ 1-2 and 4.) In comparison, there is no evidence of deficiencies in Ms. Gilmore's work as a Contract Analyst IV. (Defendant's Separate Statement of Facts ("SSF") 33-37.) Defendant had reason to conclude that Ms. Gilmore was qualified for the position of Contract Analyst V and was a better candidate for the position than the plaintiff. (Defendant's SSF 1-3, 9, 26-27, 30-37, 39 and 41; Defendant's Exhibits D, E, F, G, H, I, J, L, M, N and O; Gilmore Depo. 19: 17-21; 6 in Plaintiff's Exhibit 4; Lamb Depo. 83: 15-24 and 86: 1-8 in Plaintiff's Exhibit 2; Lacey Declaration ¶¶ 1 and 3-7; Lamb Declaration ¶¶ 1, 5-6, 15 and 17-22; Williams Declaration ¶¶ 1-4 and 8.)

Plaintiff failed to produce substantial responsive evidence that the defendant's showing is pretextual or evidence raising a reasonable inference of age-based animus. There is no evidence showing that in not requiring a Contract Analyst V to have a juris doctor degree, the defendant intended to treat the plaintiff unfavorably based on his age. In 2006, Ken Woodard was preparing to retire. (Woodard Declaration ¶ 10.) Mr. Woodard discussed his excitement about retirement with employees in the Business Contracts department. (Woodard Declaration ¶ 10; Lamb Declaration ¶ 7.) In making the comments the plaintiff found objectionable, Mr. Woodard did not say that the plaintiff was too old nor mention the plaintiff's age. (Silen Depo. 164: 13-25 in Defendant's Exhibit K.) Viewed in context, Mr. Woodard's January, 2006, statements to the plaintiff do not raise an inference of invidious intent.

After the plaintiff complained to his supervisor about Mr. Woodard's comments about retiring, there is no evidence of discriminatory conduct by Mr. Woodard from January, 2006 through May, 2006, when Mr. Woodard went on medical leave. Additionally, Mr. Woodard made sure that the plaintiff was included in the interview process by instructing Mr. Lamb to contact personnel when Mr. Woodard noticed that personnel had not forwarded the plaintiff's application for consideration. (Woodard Depo. 64: 12-23 in Plaintiff's Exhibit 3; Defendant's SSF 19-20.)

The evidence does not support the plaintiff's assertion that Mr. Woodard dominated the interview process. (Defendant's SSF 26, 30-37, 39 and 41; Defendant's Exhibits N and O;

Woodard Depo. 60: 25-62: 1 in Plaintiff's Exhibit 3; Lamb Depo. 64: 18-25, 65: 16-18, 76: 16-77: 13, 86: 9-24 and 99: 1-3 in Plaintiff's Exhibit 2; Lacey Declaration ¶¶ 1 and 3-7; Williams Declaration ¶¶ 1-4, 6 and 8.) There is no evidence that any panelist was influenced in their scoring by Mr. Woodard's conduct during the interviews. Plaintiff cites to the investigation report by Danesha Nichols in support of his case. This report found that Mr. Woodard's behavior during the interviews did not influence the other panelists and his behavior was not limited to older applicants. (Page Bates-stamped DEF 000170 in Plaintiff's Exhibit 8.) The evidence shows that Mr. Woodard cut off all interviewees, not just the plaintiff. (Williams Declaration ¶ 5; Lamb Depo. 103: 16-24 in Plaintiff's Exhibit 2.) There is no evidence that Mr. Woodard only interrupted older applicants during the interviews. Finally, it appears that Mr. Woodard had a domineering personality. (Silen Declaration ¶ 29.) Plaintiff asserts that Mr. Woodard "manipulated the proceedings". The fact that Mr. Woodard is pushy is insufficient to raise an inference of age-based discrimination.

Accordingly, Defendant's motion for summary judgment is **GRANTED**.

Defendant is directed to prepare a formal order consistent with this ruling and in accordance with Code of Civil Procedure section 437c, subdivision (g) and California Rules of Court, rule 3.1312.